SHRIVER CENTER
Sargent Shriver National Center on Poverty Law

November 18, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

**Re: Comments on Notice of Proposed Rulemaking Credit Card Accountability, Responsibility and Disclosures Act of 2009, 74 Fed. Reg. 54, 124 (Oct 21, 2009), Regulation Z - Truth in Lending (R-1370)**

Dear Chairman Bernanke, Members of the Board, and Board Secretary Johnson:

I am writing from the Sargent Shriver National Center on Poverty Law ("Shriver Center"), a Chicago-based non-profit policy development and advocacy organization, to comment on the proposed changes to Regulation Z – Truth in Lending (R-1370), which would create new rules to regulate the credit card industry pursuant to the Credit Card Accountability, Responsibility and Disclosures Act of 2009 ("Credit CARD Act").

We commend the Federal Reserve for its efforts in issuing the proposed rule, especially given the short timeframe, as an important step in providing needed consumer protections in financial products and services. In general, we support many of the provisions especially the provisions to:

Limit the application of increased rates to existing credit card balances;

- Require credit card issuers to consider a consumer's ability to make the required payments;
- Establish special requirements for extensions of credit to consumers who are under the age of twenty-one;
- Regulate credit card marketing to students at institutions of higher education; and
- Limit the assessment of fees for exceeding the credit limit on a credit card account.

There are, however, a number of ways in which the proposed rule can be improved as set forth below.

1. ***Ability to Pay (Reg. Z §226.51)***

The Credit CARD Act requires card issuers to consider the consumer's ability to make the required minimum payment under the terms of the account. Proposed Reg. Z § 226.51(a) provides that the issuer's consideration of ability-to-pay must be based on the income, assets and current obligations of the consumer. While unobjectionable, this formulation is missing a critical element.

While the proposed rule requires consideration of income, assets and current obligations, it does not prescribe *how* issuers must consider this information. Furthermore, the proposed rule does not define "obligations." The proposed rule provides that issuers must "have reasonable policies and procedures in place to consider" income, asset and obligation information, but provides no further guidance on translating that consideration into a meaningful assessment of affordability.

Without any guidelines for when a consumer has the ability to pay, the rules are meaningless. An issuer could require the consumer to submit information on income, assets and current obligations and could claim that the information was "considered" while continuing to conduct business as usual. Congress included this provision for a reason and intended it to impose some limits on the extension of improvident credit. Additionally, there should be a higher ability-to-pay threshold for younger consumers.

Also, a significant deficiency of the proposed rule is that it does not require the issuer to verify income or asset information before opening a credit card account. The Board declined to impose such a requirement, citing potential burdens particularly for accounts opened at point-of-sale. The Board stated its concern that a verification requirement would restrict consumers' ability to open a new account. Yet, promoting point-of-sale credit card account openings should not override the Congressional concern that there be a meaningful underwriting process for credit cards. Indeed, it was Congress's concern over the ease with which consumers can open credit card accounts, including in retail stores at point-of-sale, that Congress has acted. Too many consumers, tempted by offers of discounts or "no interest" at retail stores, have found it all-too-easy to open an account and incur credit card debt for which they struggle to repay. It was the desire to slow down the accelerated pace at which credit card accounts can be opened that gave rise in part to the ability-to-pay requirement.

2. ***Limitations on Increases in APRS and Certain Fees (Reg. Z §226.55)***

Proposed Reg. Z § 226.55 implements what is perhaps the most critical protection of the Credit CARD Act, the prohibition in Section 171 of TILA against increases in any annual percentage rate (APR), fee, or finance charge applicable to any outstanding balance, except under certain exceptions.

While we support most of the proposed rule, it could be improved in several respects. Most importantly, we are concerned that it lacks an extremely critical provision – a ban against circumvention or waiver of the rule's protections. We are already seeing many evasions. We address the specific evasions we are aware of below, but the game of whack-a-mole will continue unless the Board adopts a general anti-evasion rule.

Additionally, the proposed rule applies to increases, not just with respect to the APR, but also certain fees. We support this provision, but believe it should be extended to all fees that in reality constitute a substitute for interest charges. Specifically, we believe the list of fees covered by proposed Reg. Z § 226.55 is too limited, because the list does not cover new fees that could be used as a substitute for periodic interest. Increasingly, creditors are using fees as a substitute for periodic interest. Even before the Credit CARD Act has gone into effect, we are seeing issuers impose all sorts of new fees. For example, issuers have imposed fees for "inactivity" or low usage. One can imagine an inactivity fee that defines "inactivity" as a failure to make new purchases, something that would be desirable conduct for the debt-laden consumers who Congress most wanted to protect from interest rate hikes (and conduct that might be required if the consumer's credit limit has been lowered).

When the Credit CARD Act becomes effective, issuers will have an even greater incentive to both increase old fees and create new ones, in order to make up for income lost because of the Act's limitations on increasing APRs for an outstanding balance. Thus, the Board should ensure that the protections of Reg. Z § 226.55 apply to both the listed fees, and any new fees, unless the fees qualify for a specific exception. This will prevent issuers from imposing new fees as a form of interest substitute.

### 3. ***Over the Limit Transactions (Reg. Z. §226.56)***

Under the Credit CARD Act creditors are prohibited from charging an over-the-limit fee, unless the consumer has expressly elected to permit the creditor to pay transactions that will exceed the credit limit on the consumer's credit card account. In general, we support many provisions of the Board's proposed rule, but urge the Board to strengthen it in a number of critical aspects. Most importantly, the Board must prohibit any additional or increased fee or charge, or any other difference in account terms, for consumers who choose not to opt-in to over-the-limit transaction payment.

We also urge the Board to include an explicit statement that all consumers, including existing accountholders, must receive a notice regarding the opt-in right and must consent before a creditor can impose an over-the-limit fee in the proposed regulation.

The Board also asks whether creditors should be required to provide the consumer with a written confirmation once the consumer has opted in, to verify that the consumer intended to make the election. We support the requirement for a written confirmation, and believe that it is critical for consumers who opt-in by telephone, in person, or using other non-written methods.

Proposed Reg. Z §226.56(i) requires issuers to implement the consumer's revocation as soon as reasonably practicable, but does not set forth a specific time period. The Board asks whether it should establish a safe harbor, such as five days from the consumer's request. We believe that the Board should establish a safe harbor, and that the safe harbor should be three days from when the creditor receives the request.

The Board also asks whether it should require creditors to implement a consumer's revocation request within the same time period that a creditor generally takes to implement opt-in requests. We would support such an approach, but prefer a firm number of days as a deadline. Consumers need certainty about when their revocation requests will be implemented.

The Board also requests comment on whether a creditor should be permitted to obtain consumer consent for the payment of over-the-limit transactions prior to the effective date of the final rule. We believe they should not be allowed to do so. As discussed throughout this section, critical improvements to the proposal are needed in order for it to provide adequate consumer protections—including, among others, a requirement that consumers be offered identical account terms regardless of whether or not they opt-in. These protections should be firmly in place before the creditors obtain consumers' consent to over-the-limit transaction payment.

### 4. ***Deferred Interest Plans***

We believe that Section 127(j) of TILA's prohibition against double cycle billing, as added by the Credit CARD Act, also prohibits deferred interest plans that permit the retroactive assessment of interest for the entire deferred interest amount for the entire period. Not only does Section 127(j)(2) contain very specific and limited exceptions to its prohibitions, an exception for deferred interest plans was removed from a prior version of the bill. Given the clear legislative history that the Credit CARD Act banned such plans, we believe the Board is taking an action directly contradicting the statute in authorizing them under proposed Comments 54(a)(1)-2 and 55(b)(1)-3.

As stated above, we believe that the Credit CARD Act banned deferred interest plans, and the Regulation Z should reflect express Congressional intent. However, at a minimum, the deferred interest provisions of the proposed rule must be greatly strengthened. First, the Board should prohibit any statement or advertisement of a deferred interest plan from including the term "no interest," "no interest until X date" or "interest free." While the Board does rightfully ban disclosure of the APR for a deferred interest plan as "0%" under proposed Reg. Z § 226.5a(b)(1), this is not sufficient to ensure that consumers are not misled about the nature of deferred interest plans. The Board should ban any suggestion or implication that a deferred interest plan carries no interest rate. Second, the Board should in proposed Reg. Z § 226.7(b)(14) require a disclosure in ALL periodic statements during the deferred interest period, not just the last two billing cycles, that the consumer must repay the entire balance in full or will be obligated for the entire amount of accrued interest.

The Shriver Center appreciates the opportunity to comment on the proposed amendments to Regulation Z and urges the adoption of the proposed rules to ensure strong and effective cardholder protections.
Sincerely,

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